

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.552 OF 2001

DIST. SOLAPUR

Tukaram Kondiba Khandekar, R/o.)
Tarangewadi, Tal. Sangola, Dist.)
Solapur, At present in Yeroda Central)
Prison, Pune.) ... Appellant/Accused

Versus

The State of Maharashtra) ... Respondents

Mr. S.G. Kudle, for the appellant- accused.

Mr. D.R. More A.P.P. for the respondent- State.

**CORAM : SMT. RANJANA DESAI &
D.G. KARNIK, JJ.**

**DATE ON WHICH THE JUDGMENT
RESERVED : 20 APRIL, 2006.**

**DATE ON WHICH THE JUDGMENT
PRONOUNCED : 26TH APRIL, 2006.**

JUDGMENT: (Per Smt. Ranjana Desai, J.)

1. The appellant was tried in the Court of IInd Additional Sessions Judge, Pandharpur in Sessions Case No.3 of 1992 for offence punishable under section 302 of the Indian Penal Code (for short, "the IPC"). By judgment and order dated 22/6/2001, the learned Sessions Judge convicted the appellant for offence punishable under section 302 of the IPC and sentenced him to suffer rigorous imprisonment for life and to pay a fine of Rs.1,000/- in default, to further undergo rigorous imprisonment for a period of three months. The appellant has challenged this judgment and order in this appeal.

2. The prosecution case may be shortly stated :

Deceased Laxman was the husband of the informant PW-3 Dropadabai. The deceased, PW-3 and their son Datta and daughter Sangeeta were residing together at Tarangewadi from Javala, Taluka Sangola. They owned agricultural land in the said village. The relations between the deceased and the appellant were strained. There used to be quarrels between the two. According to the prosecution, on 25/9/1990 at about 6.00 p.m., the deceased was sitting in his house. At that time, PW-3 Dropadabai was also present. The appellant arrived there. He asked the deceased to come out. The deceased went out. They both went towards the well of the

deceased. PW-3 Dropadabai followed them. When the deceased and the appellant arrived near the well of the deceased, the appellant dealt a stick blow on the head of the deceased. The deceased fell down. Then the appellant stabbed the deceased on his neck with a knife. PW-3 Dropadabai started shouting. The appellant threatened PW-3 Dropadabai with knife. He then left the place by a bicycle. On hearing PW-3 Dropadabai's crying, PW-5 Tatoba and PW-6 Ankush arrived there. They saw the appellant going away with the knife and the stick, by his bicycle. PW-3 Dropadabai then went to Sangola Police Station and lodged the report that the appellant committed murder of her husband. On the basis of this, offence came to be registered and investigation was started. After completion of investigation, the appellant came to be charged as aforesaid.

3. In support of its case, the prosecution examined as many as nine witnesses. The star witness of the prosecution is PW-3 Dropadabai. The prosecution also examined PW-5 Tatoba and PW-6 Ankush, who according to PW-3 Dropadabai had rushed to the scene of offence. They did not support the prosecution case. The post-mortem notes (Ex-17) were proved by PW-4 Dr. Ramesh. The details of investigation were given by PW-9 PSI Shidrao Patil, who was at the relevant time Police Sub-Inspector attached to Sangola Police Station.

4. The appellant pleaded not guilty to the charge. He claimed to be tried. After perusing the evidence on record, the learned Sessions Judge convicted the appellant as aforesaid and, hence, this appeal.

5. We have heard at some length Mr. Kudle, the learned counsel for the appellant and Mr. More, the learned A.P.P. for the State. With the assistance of the learned counsel, we have gone through the evidence and the record.

6. Mr. Kudle contended that barring the evidence of PW-3 Dropadabai, there is absolutely no evidence on record to connect the appellant with the crime in question. He submitted that PW-3 Dropadabai is the wife of the deceased. She is, therefore, an interested witness. Her testimony needs to be corroborated by the evidence of some independent witnesses. Though independent witnesses were available, the prosecution has not chosen to examine them. Two witnesses, who have been examined to support the version of PW-3 Dropadabai viz. PW-5 Tatoba and PW-6 Ankush have not supported the prosecution. Therefore, there is no corroboration to the evidence of PW-3 Dropadabai. Mr. Kudle contended that one Gana and Laxman were also present at the scene of offence. This has been stated by PW-3 Dropadabai in the FIR (Ex-14). However, Gana and Laxman have not been examined by the

prosecution. According to him, Gana had made an application for anticipatory bail. This indicates that Gana himself was involved in the offence. The prosecution has, therefore, wrongly involved the appellant. Mr. Kudle contended that the officer who recorded the FIR is not examined which casts a shadow of doubt on the prosecution's case. The police have not produced the relevant station diary which also reflects on the credibility of the prosecution story. Mr. Kudle contended that the prosecution has failed to prove motive. He further contended that the learned Judge has rightly observed that the seized articles were not sealed and, therefore, the report of chemical analysts indicating that there was human blood of "A" group on the dhoti of the appellant and on the knife recovered at the instance of the appellant, which group matched with the group of the blood found on the clothes of the deceased cannot be accepted and has rightly not been accepted by the trial court. Mr. Kudle pointed out that the report of the chemical analysts which was tendered in the court is a duplicate copy. The report of the chemical analysts was not promptly called for by the prosecution and, therefore, doubt is created about the veracity of the prosecution case. Mr. Kudle further contended that according to PW-3 Dropadabai, after the appellant dealt blows of knife, she fell on the person of the deceased. There was profuse bleeding from the injuries sustained by the deceased. Her clothes were also stained with blood. According to her, she went

to the police station with the same clothes on her person. Mr. Kudle contended that it was, therefore, necessary for the police to take charge of her clothes. That would have supported the prosecution case. The fact that her clothes were not taken charge of makes the prosecution story suspect. Mr. Kudle, therefore, contended that the conviction and sentence of the appellant cannot be sustained and must be quashed by this court.

7. As against this, Mr. More the learned A.P.P. for the State contended that no interference is necessary with the impugned judgment and order. He submitted that PW-3 Dropadabai's evidence is cogent and consistent. She is the most natural witness. The trial court has rightly placed reliance on her evidence. He submitted that even though other witnesses have turned hostile, the conviction can rest on the evidence of PW-3 Dropadabai and the evidence of the Investigating Officer. Relying on the judgment of the Supreme Court in Parveen v. State of Haryana, (1996) 11 SCC 365, the learned A.P.P. contended that if the evidence of a solitary witness is found to be truthful, conviction can rest on it. Mr. More contended that finding of human blood on the weapons and clothes of the appellant even in the absence of the determination of the blood group can be a material circumstance. In this connection, he relied on the judgment of the Supreme Court in Khujji @ Surendra Tiwari v. State of

Madhya Pradesh, (1991) 3 SCC 627. He submitted that it is true that the chemical analyst has not been able to give analysis of the blood of the appellant. But, it is not the case of the defence that the appellant had suffered injuries. Therefore, finding of human blood on the clothes of the appellant even though his blood group could not be determined would be a circumstance which can be taken against the appellant. Mr. More then contended that it is true that some of the witnesses have turned hostile. But the evidence of the hostile witnesses cannot be discarded in toto. That part of the evidence of the hostile witnesses which supports the prosecution case can always be relied upon. In this connection, he relied upon the judgment of the Supreme Court in Gura Singh v. State of Rajasthan, AIR 2001 SC 330. He submitted that the conviction and sentence be, therefore, confirmed.

8. Since the prosecution story mainly rests on the evidence of PW-3 Dropadabai, it is necessary to first refer to her evidence. PW-3 Dropadabai has stated that she was residing with her husband and children at Tarangewadi. The appellant was residing behind her house. Her husband, the deceased used to locate places where water could be available for tube wells. About six months prior to the incident, he had identified one place for the tube well of the appellant. Then a bore well was dug in his field. However, adequate

water was not found and, therefore, the appellant was on inimical terms with the deceased and his family. PW-3 Dropadabai has further said that the deceased's cousin had put up his land for sale. The deceased had offered Rs.60,000/- for the land. The appellant wanted to purchase it for Rs.65,000/- . The deceased's cousin Tatyoba purchased it for Rs.70,000/- . Therefore, the appellant had abused the deceased. About 15 days prior to the incident in question, the appellant had assaulted the deceased with the handle of spade near the well.

9. As regards the incident in question, PW-3 Dropadabai stated that at about 6.00 p.m., she was cooking food. At that time, the appellant came to the house. He asked the deceased to come along with him. They went near the well. She followed them to find out why the appellant had taken the deceased with him. According to her, the appellant gave one stick blow on the head of the deceased. The deceased fell down. Then the appellant dealt three knife blows on the throat of the deceased. She shouted. The appellant threatened her at the point of knife. On hearing her cries, PW-5 Tatoba and PW-6 Ankush came there. The appellant ran away on a bicycle with the stick and the knife. The deceased succumbed to the injuries on the spot. According to PW-3 Dropadabai, she was then taken to the Sangola Police Station. Her statement was recorded. It

is at Ex-14. It was treated as FIR. When the knife, stick and the bicycle were shown to her, she identified the said articles as the same which were used by the appellant. In the cross-examination, she has admitted that as regards the earlier quarrels between the deceased and the appellant, the deceased had not lodged any complaint with the police. As regards the attack on her husband, in her cross-examination, she is consistent. She has added that her husband was bleeding profusely and she fell on her husband. According to her, her clothes were stained with blood. It was argued by Mr. Kudle that her presence at the scene of offence is doubtful because the police have not seized her clothes, which were stained with blood. We find no substance in this submission. It is true that the police ought to have seized the clothes of PW-3 Dropadabai. But a mistake committed by the Investigating Agency in the investigation should not be allowed to enure to the benefit of the appellant when the circumstances on record clearly indicate his involvement. We do not find anything on record to suggest that the police have falsely involved the appellant with any ulterior motive. It is significant to note that the incident had taken place at 9.00 to 9.30 p.m. and the FIR was lodged at 22.00 hours on the same day. In the FIR PW-3 Dropadabai had named the appellant. There is consistency in the FIR and the evidence of PW-3 Dropadabai. Considering the fact that PW-3 Dropadabai had to arrange for the jeep to go to Sangola, we do

not think that about 4½ hours taken to lodge the FIR can be called exorbitant delay. The prompt lodging of FIR containing the name of the appellant goes a long way in establishing the prosecution case.

10. In her FIR, PW-3 Dropadabai has stated that PW-5 Tatoba and PW-6 Ankush arrived at the scene of offence after hearing her cries and they had seen the incident. These two persons have been examined by the prosecution. However, PW-5 Tatoba and PW-6 Ankush have not supported the prosecution case. It is well settled that evidence of a hostile witness need not be discarded in its entirety. A part of his testimony can be relied upon by the prosecution if it is found to be creditworthy. Following observations of the Supreme Court in Guru Singh's case (supra) bear out this legal position.

“It is a misconceived notion that merely because a witness is declared hostile his entire evidence should be excluded or rendered unworthy of consideration. In a criminal trial where a prosecution witness is cross-examined and contradicted with the leave of the Court by the party calling him for evidence cannot, as a matter of general rule, be treated as washed off the record altogether. It is for the Court of the fact to

consider in each case whether as a result of such cross-examination and contradiction the witness stands discredited or can still be believed in regard to any part of his testimony. In appropriate cases the Court can rely upon the part of testimony of such witness if that part of the deposition is found to be creditworthy.”

11. In this case, both these witnesses have stated that after hearing the cries of PW-3 Dropadabai, they went to the scene of offence. They saw the deceased lying on the ground and PW-3 Dropadabai was near him. Though they denied that they had seen the incident, the fact that they visited the scene of offence and found PW-3 Dropadabai present near the deceased is established through their evidence. To this extent, they support the prosecution. The presence of PW-3 Dropadabai, therefore, can hardly be disputed. If PW-3 Dropadabai was present at the scene of offence and she had seen the incident, there is no reason why she would involve wrong persons as assailants of her husband. No wife would let the real culprit go scot-free. We find that the evidence of PW-3 Dropadabai has a ring of truth.

12. According to PW-3 Dropadabai, the appellant assaulted the

deceased with a stick. Then the appellant dealt knife blows on his throat. She has stated that the appellant hit the deceased on his head with a stick and the appellant dealt three blows of knife on the throat of the deceased.

13. PW-4 Dr. Ramesh, who had done the post-mortem on the deceased found the following injuries on the body of the deceased :

“1. Incised wound, size 5 inch x 2 inch x 2 inches. On anterior aspect of neck and above thyroid cartilage.

2. Incised wound size 1 inch x ½ inch x ½ inch at sub mental region.

3. Incised wound, size 1 inch x ½ inch x ½ inch parallel to injury no.2.

4. Contusion, size 1 inch in diameter over right parietal region.”

He has stated that the first three incised wounds are possible by hard and sharp object like the knife (article 6), which was shown

to him. PW-4 Dr. Ramesh has further stated that the fourth injury i.e. contusion is possible with hard and blunt object like the stick (article 7), which was shown to him. Therefore, the medical evidence completely bears out PW-3 Dropadabai's version about the incident.

14. According to the prosecution, at the instance of the appellant, the knife (article 6), the stick (article 7) and the bicycle were discovered. PW-2 Gautam, who is a pancha to the memorandum (Ex-28) and panchanama (Ex-29) has turned hostile. However, PW-9 PSI Patil, the Investigating Officer has proved these discoveries. He has stated that the knife had blood stains on it. We have no reason to disbelieve PW-9 PSI Patil. Discovery of these articles at the instance of the appellant on 27/9/1990 lends support to the evidence of PW-3 Dropadabai that the appellant used a stick and a knife to attack the deceased and he ran away on the bicycle.

15. On 26/9/1990 clothes of the deceased were seized under panchanama (Ex-18). PW-9 PSI Patil has stated that PC Rathod produced the clothes of the deceased from the hospital. Ex-18 is the panchanama in that connection. According to the report of the chemical analysts, blood stains found on the dhoti worn by the deceased and the blood stains on the knife were of the same group. According to PW-9 PSI Patil on the arrest of the appellant, his clothes

were also seized. Pancha to the said panchanama, which is at Ex-27, has turned hostile. However, on this aspect, evidence of PW-9 PSI Patil can be believed as he appears to us to be credible. Though the report of the chemical analysts (Ex-32) reveals that there was human blood of "A" group on the dhoti of the appellant and on the knife and the blood found on the clothes of the deceased is also of "A" group, the learned Judge has not believed this evidence because according to him, the articles were not sealed. The learned A.P.P. strenuously urged that the learned Judge is wrong because the prosecution has examined PW-7 Deshmukh, who was at that time attached to Sangola Police Station as ASI. He has stated that the seized articles were sealed. They were in a sealed packet and he took them to the office of the chemical analysts on 1/10/1990 in a sealed condition.

16. It does appear that the learned judge has not considered the evidence of PW-7 Deshmukh. Our attention is also drawn by the learned A.P.P. to the fact that the report of the chemical analysts says that the packet received by the chemical analysts' office was in a sealed condition. It does appear that this aspect of the prosecution case has escaped the attention of the learned Judge. However, in our opinion, in the facts of this case, it is not proper at this stage to take into consideration the report of the chemical analysts and return a finding against the appellant. We say so because surprisingly though

the blood of the appellant was sent to the chemical analyst, the chemical analyst has not ascertained the blood group of the appellant. As to why he has not analysed the blood of the appellant, no explanation is offered by the prosecution. In such circumstances, we feel that though discovery of articles at the instance of the appellant can be believed, no mileage can be drawn by the prosecution because of finding of blood of "A" group on the dhoti of the appellant and on the knife discovered at the instance of the appellant. However, though in the aforestated circumstances, reliance cannot be placed on the report of the chemical analyst, the investigating officer has deposed about finding of blood stains on the knife and the dhoti worn by the appellant and that circumstance will be a material circumstance.

17. We also do not find any substance in the submission of Mr. Kudle that the officer, who recorded the FIR is not examined and, therefore, the FIR is a concocted document and it is ante-timed. We also do not attach importance to the non-production of diary entry by the police. PW-9 PSI Patil has stated that he was present when the FIR was recorded. Therefore, assuming that the person, who recorded the FIR is not examined that will not adversely affect the prosecution case. Similarly, non-examination of PC Rathod, who brought the clothes of the deceased from the hospital will also not

affect the prosecution case. It is not possible for the prosecution to examine all those who are concerned with the investigation of the case at different stages. Such a course may not be feasible also. PW-9 PSI Patil is the Investigating Officer. He has given evidence in the court obviously after referring to the record. We find nothing wrong in such an exercise. We find his evidence to be credible and, therefore, non-examination of PC Rathod is hardly of any consequence. Though PW-3 Dropadabai has stated that the appellant and the deceased were on inimical terms and she has given reasons for the same, the learned Sessions Judge has held that the motive is not established. Assuming that to be so, that in our opinion would not disprove the prosecution case. Motive may assume importance in some cases which rest entirely on circumstantial evidence. When there is eye-witness account and the eye-witness is found to be credible, absence of motive will not have any adverse effect on the prosecution case.

18. In the ultimate analysis, we must conclude that the prosecution has proved its case beyond reasonable doubt. Implicit reliance can be placed on the evidence of PW-3 Dropadabai, whose evidence is supported by PW-4 Dr. Ramesh and the post-mortem notes (Ex-17). Her presence at the scene of offence is proved beyond doubt. PW-5 Tatoba and PW-6 Ankush have turned hostile. But

they have categorically stated that PW-3 Dropadabai was present at the scene of offence. Discovery of stick and the knife at the instance of the appellant is proved. The knife and dhoti worn by the appellant were stained with blood as deposed by PW-9 PSI Patil. All these circumstances establish the guilt of the appellant. The appellant, in our opinion, has rightly been convicted. No interference is necessary with the impugned judgment and order. Appeal is dismissed.

(SMT. RANJANA DESAI, J.)

(D.G. KARNIK, J.)